

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**  
**February 12, 2002**

In Reply Refer To:  
1800B3-GDG

Lee J. Peltzman, Esq.  
Shainis & Peltzman, Chartered  
1850 M Street, N.W.  
Suite 240  
Washington, D.C. 20036

In re: KBMD(FM), Marble Falls, TX  
Facility No. 86792  
File No. BPED-19970521MB

Dear Mr. Peltzman:

This letter concerns the uncontested February 8, 2002 request filed on behalf of Media for the Holy Family Foundation, Inc. ("Media"), permittee of unbuilt noncommercial, educational FM station KBMD(FM), Marble Falls, Texas. Media requests that the referenced construction permit be treated pursuant to the Commission's tolling rules, 47 C.F.R. §73.3598(b). For the reasons detailed below, we will on our own motion treat Media's request as one for waiver of the Commission's tolling provisions.

The referenced permit was initially granted February 9, 1999, and would have expired on Saturday, February 9, 2002, absent tolling treatment. Media reports that it was unable to complete construction because of severe rainstorms that blanketed the Marble Falls, Texas area on February 4 and 5, 2002. Media encloses a report from Meteorologist Bill Hecke establishing that the Marble Falls area received more than 0.5 inches of rain in that span. Media also supplies a letter from LCRA Telecom, its tower contractor, stating that weather conditions prevented installation of the station's antenna on those two workdays.

As our rules do not, in pertinent part, recognize tolling for "act of God" purposes outside such disaster-related events such as tornadoes, floods, earthquakes, or hurricanes, our general tolling provisions do not apply. It is well established, however, that the Commission can waive any of its rules, upon a finding of good cause consistent with the public interest. *Wait Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied* 409 U.S. 1027 (1972). With respect to waiver of tolling, the Commission recognizes that "there may be rare and exceptional circumstances . . . which would warrant the tolling of construction time." *Memorandum Opinion and Order* in MM Docket 98-43, 14 FCC Rcd 17525, 17541 (1999). We believe that Media's circumstances warrant waiver of the Commission's construction period rule. In particular, we note that Media is requesting only two additional workdays and bases that short request on a delay that occurred in the

final week of the construction period as Media was taking the final steps needed to complete construction.

Accordingly, Media's request for waiver of the Commission's tolling rules, 47 C.F.R. §73.3598(a), IS GRANTED. We are changing the station's expiration date to February 13, 2002.

Sincerely,

Peter H. Doyle  
Chief, Audio Services Division  
Mass Media Bureau